

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

LARRY S. BANKHEAD,

Plaintiff,

v.

**CIVIL ACTION NO. 2:04cv 59
(Maxwell)**

**COMMISSIONER, SOCIAL
SECURITY ADMINISTRATION,**

Defendant.

ORDER

It will be recalled that by Order entered on March 9, 2005, the Court dismissed the above-styled social security action for failure to prosecute and for failure to comply with the Court's Order of November 22, 2004, which Order directed the parties to file their Motions for Summary Judgment on or before January 24, 2005. It will further be recalled that on March 22, 2005, Counsel for Plaintiff filed a Motion for Reconsideration of Plaintiff's Motion for Judgment on the Pleadings and Motion to Vacate Opinion Memorandum and Judgment Order.

On January 23, 2006, the Court entered an Order, upon recommendation of Magistrate Judge Kaull, vacating the March 9, 2005 dismissal order and reinstating the above-styled matter on the Court's docket. The Court's January 23, 2006 Order also referred motions back to Magistrate Judge Kaull pursuant to 28 U.S.C. § 636(b)(1)(B), Rule 72(b) of the Federal Rules of Civil Procedure and Local Rule 7.02(c), with directions to consider the same and to submit to the Court proposed findings of fact and a recommendation for disposition. On July 24, 2006, Magistrate Judge Kaull filed his

Report and Recommendation wherein the parties were directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. No objections have been received.

Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised in the cross motions for summary judgment and for judgment on the pleadings were thoroughly considered by Magistrate Judge Kaull in his Report and Recommendation. The Court, upon an independent de novo consideration of all matters now before it, is of the opinion that the proposed Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action. As more fully stated in the Magistrate Judge's Report and Recommendation, the Court finds that the Commissioner's decision denying Plaintiff's application for SSI is not supported by substantial evidence. Therefore, it is

ORDERED that Magistrate Judge Kaull's proposed Report and Recommendation be, and hereby are, accepted in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that the Defendant's Motion for Summary Judgment be, and the same hereby is, **DENIED**. It is further

ORDERED that the Plaintiff's Motion for Judgment on the Pleadings be, and the same hereby is, **GRANTED IN PART**. It is further

ORDERED that this matter is **REVERSED AND REMANDED** to the Commissioner pursuant to the fourth sentence of 42 U.S.C. §405(g) for further action in accordance with the Report and Recommendation. In accordance with Shalala v.

Schaefer, 113 S.Ct. 2625 (1993), it is further

ORDERED that the Clerk of Court shall enter judgment reversing the decision of the Defendant and remanding the case to the Defendant for further proceedings and shall thereafter **DISMISS** this action from the docket of the Court.

Counsel for the Plaintiff is advised that an application for attorney's fees under the Equal Access to Justice Act (EAJA), if one is to be submitted, must be filed within 90 days from the date of the judgment order.

The Clerk of Court is directed to enter a separate judgment order and to send a copy of this Order to all counsel of record.

Enter: September 20th, 2006

/s/ Robert E. Maxwell

United States District Judge